DOCUMENT RESUME

ED 210 348 UD 021 780

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TITLE Desegregation Monitoring and Advisory Committee. "Two Roads Diverged in a Wood, and..." Report No. 6.
INSTITUTION Saint Louis Public Schools, Mo.
PUB DATE 6 Feb 81
NOTE 19p.: For related documents, see UD 021 769-771 and UD 021 776-779.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Community Role; *Court Role; *Desegregation Litigation; *Desegregation Methods; Elementary Secondary Education; *Voluntary Desegregation
IDENTIFIERS *Saint Louis City School District MO

ABSTRACT

This report examines the status of school desegregation in the St. Louis, Missouri, public schools as of February 1981, and weighs the problems associated with court ordered versus voluntary desegregation. It is proposed that the city of St. Louis might still avoid a lengthy court battle over desegregation if the following steps are followed to permit voluntary desegregation to take place: (1) a two-month extension of the cooperative planning process authorized by the court; (2) a modification of the December 19, 1980 court order to include both the City Board and the Department of Justice in the planning; (3) the issuance of a court order guaranteeing protection of the process ordered under Paragraph 12 of the court's May 21, 1980 order; (4) the issuance of a court order delaying any further activity or reporting of action concerning mandatory planning under Paragraph 12 of the May 21, 1980 order; (5) a two month delay of action on the motions filed by the Board and the NAACP to expand the case throughout the area; and (6) the reservation of a time at the end of two months for a hearing on the plan to be submitted. (Author/JCD)

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ED210348

DESEGREGATION MONITORING AND ADVISORY COMMITTEE

"Two roads diverged in a wood, and..."

Report No. 6

U.S. DEPARTMENT OF EDUCATION
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St. Louis Public Schools
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Submitted by

Edward T. Foote, Chairman

February 6, 1981

In the cause of

Craton Liddell, et al., Plaintiff

v.

The Board of Education of the City of St. Louis
St. Louis, Missouri et al., defendant

Federal District Court
Eastern District of Missouri

cause No. 72-100-C(e)

UD021780

Introduction

The opportunity to achieve a voluntary, cooperative plan of school desegregation in Greater St. Louis relatively quickly, after eight months of effort by so many, is slipping away.

Only immediate actions by this Court, preferably supported by the present and proposed parties, and strong leadership by key public officials could change that now.

The people of Greater St. Louis now confront a clear choice between two drastically different options. The wise exercise of that choice is of immense consequence, not only to hundreds of thousands of children and their parents, but to the entire community.

One option is to follow the familiar road travelled by so many other cities for a quarter of a century, and by the St. Louis Board of Education itself for eight years. It is the road of strenuous contest in court.

On that road there would be temporary winners, temporary losers in countless legal battles. Eventually a party (or parties) would win or lose the legal war. In other cities that have travelled that road, it is not always clear who actually won, at least outside the courtroom.

The other option is to complete the voluntary desegregation process begun by this Court last May. That process still might result in a sensible educational plan that could be adopted quickly, end this case for all concerned, expand educational choices for all children in a way consistent with the

Constitution--and all by multiplying choices to be made freely, not by coercion.

If such a voluntary, cooperative plan does not materialize in the near future, the first option would remain for the community and the parties. There will be time enough in years to come for all the legal fighting this community wants.

In my last regular report to the Court filed January 19, 1981, I deferred reporting on voluntary planning because events were happening so rapidly that any report would have been out of date immediately; perspective was impossible. This case is hardly slowing down, but enough has occurred in the latest phase of "voluntary" efforts to allow some assessment.

In the pages that follow, I attempt that. I also attempt some predictions and offer some suggestions. I do so as Chairman of the Desegregation Monitoring and Advisory Committee, but not on behalf of the Committee. I file this report under my Court-established responsibility to coordinate discussions leading to voluntary cooperation.

Chronology of Recent Significant Events

December 15, 1980 - The State, as ordered, filed a "plan" of voluntary, cooperative school desegregation.

December 15, 1980 - The Department of Justice and School Board filed a joint report that included criticism of the State's plan, but also continuing support for voluntary cooperation.

December 19, 1980 - Judge James H. Meredith resigned from the case.

December 19, 1980 - The Court, as "one last effort to promote a voluntary plan", issued a new order requiring the State to submit another more specific plan on February 2, 1981, and report on March 2, 1981, on the number of county districts willing to participate.

December 22, 1981 - Judge William Hungate replaced Judge Meredith in the case.

January 9, 1981 - The Board filed its motions to join as parties all school districts in three suburban counties.

January 16, 1981 - The NAACP filed similar motions, adding The City of St. Louis and the Housing Authority of the City of St. Louis.

February 2, 1981 - The State filed a report in which it claimed that it could not comply with the Court order to file a plan because of intervening events.

Some Observations

These publicly reported events, although the official highlights, form only a small corner of the picture. Of far more importance was--and is--the effect of these events on public officials and citizens.

Planning toward voluntary, cooperative desegregation has taken place, it is now apparent, in four quite distinct phases.

The first was from the May 21, 1980, Court order beginning the process, through the summer until shortly after school opened.

The second, beginning approximately September 17, 1980, when the Court issued its order of clarification, lasted throughout the fall and until the December 15, 1980, report by the State.

The third lasted from that report until January 9, 1981, when the Board filed its motions to join parties.

The fourth is still running. At the end of this report, I suggest a means for moving to a fifth phase before it is too late.

Most of the first two phases I have summarized in earlier reports. Here I will concentrate on the third and fourth phases, essentially what has happened since just before Christmas.

Whatever ambiguity there may have been in earlier Court orders concerning voluntary, cooperative planning, Judge Meredith gave a clear message on December 19, 1980. Officials of the State, especially in the Department of Elementary and Secondary Education, began responding immediately.

On December 30, 1980, for example, Commissioner Arthur Mallory sent every school district in Jefferson, St. Charles, and St. Louis Counties and the St. Louis City School District a questionnaire based on the specific requirements of the Court's order. Copies of that questionnaire and cover letter are attached as Exhibits One and Two.

Judge Meredith's withdrawal from the case created not only some delay, but much curiosity about his replacement. Judge Hungate was not able to meet with lawyers in the case until January 23, 1981, because of other court settings.

Although not precisely part of this chronology, President Ronald Reagan's election in November, and related political events, have permeated the public discussion. An example was the much publicized attempt in the waning days of the 96th Congress to limit the authority of the U.S. Department of Justice to recommend busing as a remedy. The attempt failed, but those opposed to mandatory remedies took some heart that the times were changing and that "forced busing" might soon end.

The press and media reported several meetings throughout this period, especially in the largely white county districts, called to protest "forced busing".

The holidays intervened. Until the time that the School Board filed its motions to add parties on January 9, 1981, the status was approximately as follows. The State was working toward compliance with the Court's new order and the February 2 deadline. Officials of some school districts in the county said they were cautiously exploring voluntary cooperation with open minds, and I believe that they were. Officials of some, perhaps the majority of school districts in St. Louis County, were saying little publicly, but were listening intently, meeting with the public, testing sentiment, and comparing notes quietly with others similarly situated. Officials of a few

districts, but only a few, had declined any "cooperative planning".

Pressure from some county residents to oppose anything having to do with the case was heavy, but the sharp distinctions between a "mandatory" plan, which might include "forced busing", and a voluntary plan, which would not, was becoming clearer in the public mind.

In short, the planning process that the Court had ordered months before was quickening again after the delays. It appeared to many, including me, that the State would be able to present on February 2 a fully developed, specific, educational plan for consideration by the Court, the parties and the community.

The signs of this quickening were not nearly as well-publicized as the sounds of protest. The protest, although motivated by genuine concern for children and the consequences of court orders, contributed little to rational planning.

Nevertheless, the work toward a voluntary solution continued quietly in offices, in many meetings in Jefferson City and throughout the county, as well as in public discussion.

That one of the parties might request a significant expansion of the case was not a surprise. By many, it had been predicted, threatened or expected, depending on perspective. Unexpectedly, perhaps, another of the Court's orders of May 21, 1980--that requiring study of the feasibility of a metropolitan-wide plan, generally considered to be mandatory in nature--may have hurried decisions to expand the case throughout the area.

During early January, however, word began to leak that the St. Louis Board of Education was in fact about to file something of the kind that it eventually did. With that news, the atmosphere surrounding voluntary planning chilled perceptibly.

When the Board actually filed the motions on January 9, several statements by Board officials in favor of continuing voluntary discussions, although welcome to those working on this planning, were lost in the uproar generated by the filing and its timing. Commissioner Mallory had requested information from county school districts by January 12.

The uproar intensified when lawyers and members of the public noted that the Board, and later the NAACP, had alleged as evidence of unlawfulness some of the very discussions and other events that had taken place during exploration of a voluntary, cooperative plan, as ordered by the Court.

The reaction was swift. Throughout the suburban area, district after district passed resolutions opposing any inclusion in the case, and a few even opposed anything voluntary. Most districts did not respond to the request for information.

There has been increasing pressure on the State to back away from its earlier, tentative positions favoring cooperation. Many county residents and their representatives have told State officials quite clearly what they think of being sued. Those who had taken a skeptical view of the cooperative process all along have been reinforced in their skepticism.

Two weeks ago I published an open letter to the community to help answer certain questions, offer some background and generally further the public debate. Since then, I am pleased to report, many people have paid me the courtesy of reading that letter carefully and responding. Many among those are from the County. Many are still working hard to find ways of cooperating. Many have urged that cooperation not yet be abandoned.

It was not surprising, although extremely disappointing to many, that the State filed the report it did on February 2. The report is admittedly far short of what the Court ordered December 19, 1980.

We now have the State blaming the City Board and the NAACP utterly for the State's inability to file the plan the Court ordered, and the City Board and the NAACP blaming the State utterly for what they take to be its dereliction of duty in so many ways.

There is nothing surprising in such differing perceptions during a lawsuit. As much as the facts allow, good advocates will claim for their clients the maximum proximity to virtue, while charging the other side with the reverse.

The point is not that what is happening is wrong or that those involved are not doing their jobs well. What is happening is not only consistent with the adversary system, it is entirely predictable. In one way or the other, it has happened in Atlanta, Boston, Charlotte, Chicago, Cleveland,

Dayton, Denver, Detroit, Indianapolis, Los Angeles, Miami, Milwaukee, Richmond, Wilmington, among many other cities and towns.

Whoever "won" in these cases, all of them took many years to decide. In none of them did the community itself seize the initiative from the courts, despite repeated requests from the courts themselves, going back to Brown v. the Board of Education. In none did a community offer an educational plan of high quality that could be found both constitutional and acceptable to those it would directly affect.

This much any observer familiar with school desegregation cases can say with confidence: The path ahead for the first option I described in the introduction, that of extended battle in the Courts, is predictable in almost every respect except who will "win" in the legal sense and how long it will take to find out.

In the section that follows, I propose a means of discovering quickly whether a voluntary, cooperative plan of school desegregation can ripen in Greater St. Louis before we travel farther down that first path. The proposal depends on three principle components:

1) The Court's creating a relatively safe harbor in the gathering legal storm for rational discussions.

2) The public officials involved, both State and local, and the parties pausing for the time being before the hardening postures of legal battle foreclose any cooperation in the foreseeable future.

3) The parties, and the proposed parties, supporting, or at least not actively frustrating, the rational completion of this planning process, and reserving judgment until a new, completed plan is before them.

The proposal assumes neither good guys nor bad guys. To the contrary, it takes at face value the assertions concerning cooperation made recently by the parties, especially including the State, the Board and the NAACP. All continue to express publicly their preference for cooperation, whatever they may say about the other parties.

The proposal is an attempt to accept as true the stated perceptions of each of these parties and deal with them. In short, the proposal is one way that the cycle of polarization so typical of these cases might be broken, at least for a while, to allow our community "one last effort" to try to find what might be a better way.

A Proposal

1) The Court would extend for two months the process of cooperative planning.

Comment: Several events have delayed the process in recent weeks: Judge Meredith's illness and resignation from the case; Judge Hungate's appointment, just as the holidays began and the inevitable delays of transition; the filing of the motions to expand the case, and the reactions; the Court's

delay in deciding pending motions and other actions until the parties have had an opportunity to make certain preliminary decisions.

Even the unavoidable delays alone, coupled with the desirability of a prompt, voluntary solution, seem to form sufficient reason for a short extension. Parties that have supported cooperation, whatever other positions they have taken, may even support such an extension.

2) The Court would modify its December 19, 1980, order to the State to include again in the planning specifically both the City Board and the Department of Justice.

Comment: The State objects that although these two other parties were originally ordered to work on a voluntary plan, they were omitted from the December 19, 1980, order. Without debating whether the State or the Board should have the primary responsibility for presenting a cooperative plan, I hope I will not be challenged in saying that both would have to cooperate to make one work. The Department of Justice could help, if it would.

3) The Court would issue a protective order declaring that any past, present or future discussions or other efforts or related events concerning in any way the process ordered under Paragraph 12 (a) of the Court's May 21, 1980 order would be forever protected from any discovery or use in evidence in this or any other case.

Comment: The Court has issued other protective orders in this case. There are other reasons for protecting these and other "settlement" discussions, some legal, but the most obvious one, simply put, is that people will be less interested in cooperating if they believe cooperation might be used against them as evidence in the future.

4) The Court would issue an order delaying for the time being (and perhaps forever depending on the result of cooperative efforts) any further activity or reporting under Paragraph 12 (c) of the May 21, 1980 order, generally considered to concern mandatory planning.

Comment: People close to the cooperative, voluntary planning process, including some of the parties, have noted the awkwardness of the Court-ordered parallel series of events, one leading to cooperation, the other toward a mandatory result. For the time being, at least, the second of these would be stopped to allow the first to mature, or to expire. The parties, of course, would be free to make their own decisions in their best interests, but whatever other planning would be done for the next two months would not be under Court order.

5) Delay for two months action of any kind on the motions filed by the Board and the NAACP to expand the case throughout the area, and any related actions by parties or proposed parties.

Comment: Several, including counsel for the Board itself, have suggested some delays in activating these two

motions. There may be little objection to a complete delay, although I do not know that. Such a delay would, in effect, freeze that proposed expansion of the case until the "cooperative" planning period had expired, allowing the maximum energy and attention of everyone concerned to be focused on cooperation.

6) The Court would set aside now a time at the end of the two months for a hearing on the plan to be submitted.

Comment: This schedule could allow for implementation of at least part of a voluntary, cooperative plan by next fall.

Conclusion

After 10 months of observing this case closely, as Chairman first of the Citizens Committee and now of the Desegregation Monitoring and Advisory Committee, I have few illusions left, if I ever had any. Having practiced in courts myself, I think I understand the kinds of problems confronting the lawyers for the parties in this case, and the many other lawyers who may be in the case. These thoughts, whatever their value, are not presented in blind optimism.

I am not able to assure the Court that these suggestions will result in a plan that will be acceptable or Constitutional. None of us can know that yet. But such a plan remains possible.

I am confident in predicting, however, that without decisive action by public officials directly involved in this case, and "one last effort" by many others, the Court and this community confront a desegregation case of staggering dimensions. An exceptional effort to avoid that, in the best interests of the children, is worth a little more time.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and
I--
I took the one less traveled by,
And that has made all the difference.

"The Road Not Taken"
by Robert Frost

EXHIBIT I

ARTHUR L. MALLORY
Commissioner

Area Code 314

State of Missouri
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
P.O. BOX 480
JEFFERSON CITY, MISSOURI 65102

December 30, 1980

TO: St. Louis County Superintendents
St. Charles County Superintendents
Jefferson County Superintendents
St. Louis City Superintendent

Dear School Administrator:

On December 22, 1980, I shared with you a copy of Judge Meredith's Order of December 19, 1980, requesting that specific data along with a more specific plan of voluntary pupil exchange be submitted to the Court on February 2, 1981. At that time, I indicated it would be necessary for me to supplement the information now on file with the Department.

Enclosed are questionnaires which when completed will provide data necessary for us to prepare the February 2, 1981, report. I will appreciate having the information by January 12, 1981.

It is significant that the Order states "this report shall assume that each district in the county will participate in the voluntary and cooperative plan. A plan shall encompass every district in St. Louis County." In completing the questionnaire, you will need to keep this point in mind.

When the report is completed and submitted to the Court, each school district in St. Louis County, Jefferson County and St. Charles County and the St. Louis School District will receive a copy.

An additional report will be due on March 2, 1981. In that report it will be necessary for us to list those districts willing to participate and the manner in which they will participate.

As in the past, I would be pleased to receive any suggestions you have which would assist us in developing a more comprehensive plan. Also, I will be available to meet with superintendents in small or large groups to discuss the Order and our development of an appropriate response.

Throughout the course of this litigation, questions have been raised about the motives of everyone involved. As a defendant in the suit with court orders to perform certain functions, I have been obliged to coordinate the drafting of reports, make inquiries for information, et cetera. Also, because of the pending litigation some of the normal lines of communication between my office and yours have not been as open as has been true under other circumstances. My personal and professional motives have and will continue to be to submit to the Court suggestions which will be educationally beneficial to students and will recognize the integrity and autonomy of existing local districts and which at the same time will comply with the court orders I receive.

Sincerely yours,

Commissioner of Education

td
cc: Larry Marshall
Enclosure

EXHIBIT II

20-360-901A
12/80

DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION
Office of Deputy Commissioner
P.O. Box 480
Jefferson City, Missouri 65102

SCHOOL DISTRICT FORM - 1980-81 School Year

INSTRUCTIONS: Complete School District Form and Individual School Form for each school in your district. Return completed forms to Bill Wasson.

DUE JANUARY 12

Name of School District _____ School District Code _____

Name of Person Submitting Data _____

1. Provide a map (plat) of district showing school building locations.

2. Name school buildings which are presently closed.

EXAMPLE

Name of Building	Address	Grades Served	Building Capacity	Condition of Building
West School	100 W. Main	K-4	350	Fair

EXHIBIT II

20-360-901B
12/80

DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION
Office of Deputy Commissioner
P.O. Box 480
Jefferson City, Missouri 65102

INDIVIDUAL SCHOOL FORM - 1980-81 School Year

DUE
January 12

TO BE COMPLETED FOR ALL ATTENDANCE CENTERS

1. Name of School _____ School Code _____

2. Number of additional students who could be served in this building without additional staff. _____

3. Number of additional students who could be served in this building with (_____) additional staff. _____
   number of staff

4. PUPIL STATISTICS - Total Black enrollment in this school. (Please use numbers as of last Wednesday in September if available.) _____

5. Building Capacity _____

6. Are there program(s) in this school you believe would be attractive to students in other districts?

Name of Program(s)	Grade Level	Available Spaces

7. Are there program(s) you would like to develop cooperatively with other schools and/or districts which would be attractive to students?

Name of Program(s)	Grade Level	Enrollment Potential